IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

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SUPREME COURT, U.S.

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS, et al.

Petitioners,

v.

JEROME CROWLEY, et al.

Respondents.

No. 82-432

PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION TO LIMIT ISSUES AND/OR TO DISMISS WRIT

On March 4, 1983 Local 82, et al., defendants below and petitioners before this Court, received a copy of plaintiffs-respondents' motion urging this Court to limit its review to the first question presented in the petition,[1/] decline to review the second[2/] and then dismiss the writ because the first issue does not merit the consideration of this Court.

1) In support of their motion, plaintiffs first contend that the second question should be dismissed because it was first raised before the Circuit Court. It must be noted that the question at issue challenges the district court's jurisdiction to consider the complaint in its entirety. It is axiomatic that a court's jurisdiction to consider a cause of action can be raised at any time or, if the parties fail to

1/ 1. Does §102 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §412, authorize a district court, on the basis of a suit by individual union members, to order a union to conduct an election of officers under the supervision of third parties not associated with the union, who have been appointed by the court and utilizing election rules and procedures prescribed by the court?

2/ 2. Do the remedies prescribed by §402 of the Act, 29 U.S.C. §482, for resolving disputes concerning the election of union officers proscribe the jurisdiction of the district court to enjoin the tabulation of ballots cast after the balloting process has been virtually completed?

present the question, by any court before which the case is pending. Moreover, the parties may not establish jurisdiction by stipulation. Swift & Co. v. Hocking, 243 U.S. 281, 289 (1917). Thus, the Local Union's attempt to stipulate to a new election in January, 1981, cannot create jurisdiction in the district court at the time the complaint was filed in December, 1980, if no such jurisdiction existed at that time. Plaintiffs made the same argument before the Circuit Court, but it was rejected. (Pet. App. B at 78a).

The second issue provided the basis upon which the First Circuit determined that the district court had subject-matter jurisdiction over the complaint at the time it was filed. Other challenges to the district court's jurisdiction had previously been rejected by that court. (Pet. App. A at 6a-13a) Neither the Local Union nor the Secretary of Labor as intervenor before the Circuit Court were precluded from raising additional jurisdictional arguments involving legal, not factual, issues before the appellate court. When one of those additional arguments became the focal point of the First Circuit's decision it, obviously, became a matter warranting the consideration of this Court, especially since the lower court's decision conflicted with those of other circuit courts of appeals. The fact that the jurisdictional issue in question was not first defined until the appeal does not preclude this Court's consideration of the propriety of the Circuit Court's decision.

2) Plaintiffs' second reason for revoking the writ granted to consider the jurisdictional issue is based upon the alleged legal invalidity of the election which underlies this entire litigation. The Local Union confesses at the outset that it fails to understand plaintiffs' argument and points

out that it has never been raised previously, although plaintiffs had an opportunity to do so in their opposition to the petition for a writ of certiorari.

Moreover, the proposition plaintiffs assert as a settled legal question is patently incorrect. They assert that the Department of Labor's interpretive regulations concerning the Labor-Management Reporting and Disclosure Act of 1959 require a minimum period of forty-five (45) days between a nomination meeting and the tabulation of ballots in a mail ballot election of union officers. Aside from the fact that plaintiffs conveniently ignore the fact that no such period was provided in the election of officers ordered by the district court in this case (see, Pet. App. B at 86a-93a), and that the Department's regulations are not legally binding,[3/] those regulations do not require more than the statutory fifteen (15) day notice of an election[4/] and specifically permit a nomination meeting and election to be held on the same day.[5/] Although members are entitled to inspect membership lists during the thirty (30) day period prior to an election[6/], there is nothing which prevents any member from exercising that right prior to the nomination meeting.[7/] Nor is there any basis for plaintiffs' conclusion that the thirty (30) day period of inspection must be added to the fifteen (15) day period of notice of election to constitute a forty-five (45) day requirement between nominations and election.

3/ Alvey v. General Electric Co., 622 F.2d 1279, 1286 n.7 (7th Cir. 1980), citing Skidmore v. Swift & Co., 323 U.S. 134, 139-40 (1944).

4/ §401(e), 29 U.S.C. §481(e); 29 C.F.R. §452.102.

5/ 29 C.F.R. §452.65.

6/ §401(c), 29 U.S.C. §481(c); 29 C.F.R. §452.71.

7/ Yablonski v. United Mine Workers, 71 L.R.R.M. 2606 (D.D.C. 1969) (declared candidate entitled to §401(c) protections prior to being formally nominated).

Plaintiffs' citations do not support a finding that the December, 1980 election was improper, as a matter of law, because of its scheduling. However, the ultimate conclusion as to the propriety of that election should not affect this Court's decision to review the lower court's determination that the district court had jurisdiction to consider the complaint.

3) Finally, plaintiffs urge this Court to dismiss the writ as improvidently granted because the first issue, involving a matter of statutory construction, does not warrant the Court's attention. It serves no purpose to repeat the reasons advanced to justify granting the writ set forth in the Local Union's petition. Accordingly, in the interest of brevity, the Court is referred to the arguments contained therein.

For the foregoing reasons, it is respectfully submitted that plaintiffs' motion to limit the issues in the writ of certiorari and/or to dismiss the writ as improvidently granted be denied in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioners' Opposition To Respondents' Motion To Limit Issues and/or To Dismiss Writ was served by mailing a copy thereof, first-class, postage prepaid to the following:

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Dated: March 11, 1983